

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:

ZULMA I. RODRÍGUEZ-RIVERA

PEDRO MARÍN-RECHES,

RODRÍGUEZ-RIVERA, et al,

Plaintiff

vs

PUERTO RICO TELEPHONE  
COMPANY,

Defendant

CONTESTED MATTER

CASE NO.: 09-06214 (ESL)

ADV CASE NO.: 09-0256

August 8, 2010  
Old San Juan, Puerto Rico

**ADVERSARY PROCEEDING**

HELD BEFORE THE HONORABLE ENRIQUE S. LAMOUTTE  
UNITED STATES BANKRUPTCY COURT JUDGE  
FEDERAL COURTHOUSE, OLD SAN JUAN, PUERTO RICO

APPEARANCES:

FOR DEBTOR : Otto Landrón, Esq.

FOR PLAINTIFF : Carlos Rodríguez, Esq.

**CERTIFIED TRANSCRIBERS INC.**

1075 Carr. 2 Cond. Plaza Suchville #302  
Bayamon, Puerto Rico 00959  
Tel. # (787)783-6623

P R O C E E D I N G S

(11:38 A.M.)

**PARTIAL TRANSCRIPT**

THE COURT: Thanks. I was just checking to close the matter.

I have reviewed all the documents relative to this Adversary Proceeding requesting... or for Violation of the Automatic Stay against Defendant Puerto Rico Telephone Company, and I don't have any questions.

I have again reviewed the Issue of Notice because the Defendant has not appeared in this case for any matter. As a matter of fact, I don't see any Proof of Claim filed by Puerto Rico Telephone Company.

Although, in the schedules, Puerto Rico Telephone Company is included as an Unsecured Creditor holding for a Claim on two telephone lines, and specifically the ones in question here as to Exhibit 1 and 2 presented by the Debtors.

Again, I reviewed, and there's a Certificate of Service, which is showing that the Complaint was served on Mr. Enrique Montellano, President of Puerto Rico Telephone Company, of

**CERTIFIED TRANSCRIBERS INC.**

1075 Carr. 2 Cond. Plaza Suchville #302  
Bayamon, Puerto Rico 00959  
Tel. # (787)783-6623

Puerto Rico Telephone Company's failure to respond.

Default was entered, and Judgement... Partial Judgement has been entered finding Puerto Rico Telephone Company liable by default.

And, as I said, I have reviewed the Bankruptcy Petition and Schedules, and it appears that Puerto Rico Telephone Company was, indeed, included and given notice of the Petition.

The Complaint for Violation of the Automatic Stay was filed on December 18, 2009. It stands unopposed, so the allegations in the same are deemed admitted, and particularly paragraph three:

"The Defendant, Puerto Rico Telephone Company, was named in Schedule F of the Petition as a Creditor with a security of priority. The Defendant is a Creditor of the Debtors by virtue of a lease of a residential telephone line number (787)790-0496."

I have corroborated the Schedules, and that is a fact, in addition to it being uncontested by Defendant. It appears from the record that an Order for Relief was entered on July 30, 2009, pursuant to the Chapter 7 Petition filed by the Debtors.

The testimony of Ms. Zulma Rodríguez

**CERTIFIED TRANSCRIBERS INC.**

1075 Carr. 2 Cond. Plaza Suchville #302  
Bayamon, Puerto Rico 00959  
Tel. # (787)783-6623

1 corroborates the allegations in paragraph five,  
2 that:

3 "On two occasions during the month of May,  
4 2009, prior to filing the Bankruptcy Petition,  
5 Debtors requested PRTC to disconnect the line.

6 During the month of May, Debtors installed  
7 another telephone line with another telephone  
8 company, and have not been able to use the PRTC  
9 line since.

10 Debtors assumed that the line was  
11 disconnected. That, in spite of having been  
12 notified by the Court of the filing of the case  
13 and the effect upon Creditors, PRTC continued  
14 sending monthly billing statements on August  
15 19<sup>th</sup>, September 19<sup>th</sup>, October 19<sup>th</sup>, and letters  
16 collecting the debt, copies of which are  
17 attached as Exhibits A, B and C."

18 So, what appears as Exhibit 1 in this  
19 case was attached to the Complaint, which was served  
20 on the Defendant, Puerto Rico Telephone Company. So,  
21 the Defendant was appraised of the allegations and  
22 the supporting documents at the time that the  
23 Complaint was filed.

24 "On September 18, 2009, the Defendant, by  
25 its agents and employees from the *Departamento*

**CERTIFIED TRANSCRIBERS INC.**

1075 Carr. 2 Cond. Plaza Suchville #302  
Bayamon, Puerto Rico 00959  
Tel. # (787)783-6623

1           *de Tratamiento y Cobros*, sent a letter to the  
2 Debtor at her home address.". That appears also  
3 in Exhibit 1.

4           "On October 1, 2009, the undersigned  
5 Counsel for the Debtor sent a first class  
6 letter to the Defendant informing it of the  
7 filing of the Petition and describing the  
8 provisions of Section 362(a)."

9           A copy of that letter is attached here  
10 to Exhibit E. So, the letter by Counsel was attached  
11 to the Complaint, served on the Puerto Rico  
12 Telephone Company. That letter has also been  
13 introduced in evidence as Exhibit 2 in these... at  
14 this hearing.

15           "That at no time did any agent or employee  
16 of the Defendant communicate or attempt to  
17 communicate with the Debtors' undersigned  
18 Counsel or knew or had reason to know that the  
19 Debtors were represented by him."

20           So, those are the allegations on the  
21 Complaint. They're uncontested, and they are  
22 corroborated by the record and the testimony of Ms.  
23 Zulma Rodríguez, who, in addition, has stated that  
24 she suffers from a life-threatening illness that has  
25 consumed Pre-Petition and currently all income.

**CERTIFIED TRANSCRIBERS INC.**

1075 Carr. 2 Cond. Plaza Suchville #302  
Bayamon, Puerto Rico 00959  
Tel. # (787)783-6623

1 That the basic reason for filing the  
2 Bankruptcy Petition was because they did not...  
3 since they were spending all the money in treating  
4 her condition, she needed peace and had to avoid  
5 stress.

6 The Puerto Rico Telephone Company tried  
7 to collect the debt every month. That's in the  
8 exhibits submitted. She felt stressed, sad and  
9 impotent, and called her Attorney upon receiving the  
10 first collection letter.

11 The Attorney indicated that she should  
12 wait to see if there is a second attempt before  
13 doing anything. The second attempt came, and, as a  
14 result thereof, the Attorney wrote the Puerto Rico  
15 Telephone Company to cease collection efforts.  
16 That's Exhibit 2.

17 The collection efforts continued. Ms.  
18 Rodríguez feels that her recuperation is impossible  
19 on account of the stress. And, that, subsequently,  
20 she received a call from a collection agency  
21 attempting to collect the debt.

22 I have reviewed the Claim Register, and  
23 Puerto Rico Telephone Company has not filed a Claim,  
24 although they were included as a Creditor.

25 I have reviewed separate statements

**CERTIFIED TRANSCRIBERS INC.**

1075 Carr. 2 Cond. Plaza Suchville #302  
Bayamon, Puerto Rico 00959  
Tel. # (787)783-6623

1 filed in Exhibit 1. I think they're inconsistent in  
2 the way they apply payments and the way they  
3 indicate arrears. So, that's the fact on scenario  
4 leading.

5 Now, as to how much in damages should  
6 be awarded, as I understand upon closing, the  
7 Debtors are requesting one thousand dollars for each  
8 violation. For eleven violations, that would be  
9 eleven thousand dollars.

10 They're also requesting an additional  
11 fifty thousand dollars for punitive damages and  
12 attorneys' fees in the amounts to be requested as  
13 per honorification (phonetic) to be filed.

14 MR. RODRÍGUEZ: And, an additional  
15 fifty thousand dollars for Contempt of Court  
16 remedies.

17 THE COURT: And, why different from  
18 punitive?

19 MR. RODRÍGUEZ: They are now being  
20 allowed and added on to the remedies for the  
21 Debtors, who are victims of the Violation of the  
22 Automatic Stay. And, in our... excuse me... in our  
23 Application for Partial Judgement of Default, we  
24 explained it as a matter of law. If it pleases the  
25 Court, I would go ahead and read it.

**CERTIFIED TRANSCRIBERS INC.**

1075 Carr. 2 Cond. Plaza Suchville #302  
Bayamon, Puerto Rico 00959  
Tel. # (787)783-6623

1 "In addition to remedies under Section  
2 362(k), the Debtor also has remedies for  
3 Violation of the Automatic Stay as Contempt of  
4 Court Order.

5 It is quite clear that the Violation of the  
6 Stay constitutes Contempt of Court..."... no,  
7 excuse me, I'm sorry, we're in the Contempt of  
8 Court (phonetic). I apologize.

9 That would be in the case of Jovet  
10 Engineers, Inc. versus Internal Revenue Service, 92  
11 Federal 3<sup>rd</sup>, 1539, 11<sup>th</sup> Circuit. In 1996, that  
12 decision was handed down. Also it states here:

13 "The legislative history, in Section  
14 362(k), makes clear that Congress was granting  
15 an additional remedy to Debtors beyond those  
16 already in existence."

17 And, that would be 130 Congress Record  
18 Hearing, 1942. It's also stated in Inre: Skinner,  
19 917 Federal 2<sup>nd</sup>, 444 of the 10<sup>th</sup> Circuit, a 1990  
20 decision. Those would be the arguments in law for  
21 asking damages in terms of Contempt of Court.

22 THE COURT: You mentioned eleven  
23 instances of collection. I have ten documents.

24 MR. RODRÍGUEZ: And, the phone call.

25 THE COURT: Oh, and the phone call.

**CERTIFIED TRANSCRIBERS INC.**

1075 Carr. 2 Cond. Plaza Suchville #302  
Bayamon, Puerto Rico 00959  
Tel. # (787)783-6623



1 MR. RODRÍGUEZ: That's after having  
2 referred the account to a collection agency. They're  
3 the last two communications.

4 THE COURT: Damages are assessed as  
5 follows. One thousand dollars for each violation,  
6 for eleven thousand dollars, three times that amount  
7 as punitive damages. That's thirty-three thousand  
8 dollars, plus attorneys' fees to be filed with the  
9 Court within ten days. And, the Court requests a  
10 transcript of this Court's Findings and Conclusions.

11 MR. RODRÍGUEZ: Permission to be  
12 excused, sir.

13 THE COURT: You're excused.

14 MR. RODRÍGUEZ: Thank you. Have a  
15 good day.

16 THE COURT: Court recesses till two  
17 o'clock.

18 (11:51 A.M.)

19 (Whereupon, the hearing in the above-  
20 entitled matter was terminated.)

21

22

23

24

25

CERTIFIED TRANSCRIBERS INC.

1075 Carr. 2 Cond. Plaza Suchville #302  
Bayamon, Puerto Rico 00959  
Tel. # (787)783-6623

TRANSCRIBER CERTIFICATION

I, CRYSTAL INCHAUSTEGUI BREAZ, Transcriber, do hereby certify that the foregoing transcript was transcribed by me to the best of my abilities.

I CERTIFY that all "(inaudible)" were carefully reviewed and found to be as written.

I FURTHER CERTIFY that I am not interested in the outcome of the case mentioned in said caption.

WITNESS MY HAND this 20 day of the month of August, 2010 in San Juan, Puerto Rico.

S/ CRYSTAL INCHAUSTEGUI

CRYSTAL INCHAUSTEGUI BREAZ

I, DIANE BREAZ, RPR and Official Court Reporter for the District Court of Puerto Rico, certify that the foregoing transcript has been verified and certified by me.

S/ DIANE BREAZ

DIANE BREAZ

**CERTIFIED TRANSCRIBERS INC.**

1075 Carr. 2 Cond. Plaza Suchville #302  
Bayamon, Puerto Rico 00959  
Tel. # (787)783-6623